

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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NUVIA AREVALO, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Civil No. 11-2339-AJT-tmp
	)	
UMH PROPERTIES, INC.,	)	
UMH SALES AND FINANCE, INC.,	)	
and	)	
GAIL WHITTEN,	)	
	)	
Defendants.	)	

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ORDER GRANTING PLAINTIFFS LEAVE TO FILE AMENDED COMPLAINT  
AND  
RECOMMENDATION THAT DEFENDANTS' MOTION TO DISMISS BE DENIED  
WITHOUT PREJUDICE

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Before the court is defendants' Motion to Dismiss, filed on September 19, 2011. (ECF No. 21.) Plaintiffs filed their response in opposition on November 11, 2012. Defendants filed their reply on December 14, 2012. The motion was referred to the undersigned Magistrate Judge on March 28, 2013. On June 25, 2013, the court heard oral argument on the motion. At oral argument, the court and the parties agreed that there have been significant developments in the case since the filing of the defendants' motion, including the court's order requiring most of the named plaintiffs to arbitrate their claims and the severance of those plaintiffs' claims. The court noted, and the parties agreed, that it would be appropriate

under the circumstances to allow the plaintiffs to amend their complaint.

Therefore, by agreement of the parties, the court grants the plaintiffs leave to file an amended complaint within sixty (60) days from the date of this order. Since a new case was not opened based on the severance of the arbitrating-plaintiffs, the amended complaint may include the arbitrating-plaintiffs in order to protect their interests, including their interests in ongoing settlement negotiations as discussed at oral argument. However, the amended complaint, at a minimum, must identify which claims are being brought by the ten remaining nonarbitrating-plaintiffs and which defendants are being sued for each specific claim. The plaintiffs are also on notice of the purported deficiencies in their complaint as alleged by the defendants, and will address any such deficiencies in their amended complaint. The defendants will have thirty (30) days from the filing of the amended complaint to answer or otherwise respond. The filing of the amended complaint will not alter the obligations of the parties to continue complying with District Judge Tarnow's prior orders.

Based on the anticipated filing of the amended complaint, it is recommended that the defendants' motion to dismiss be denied without prejudice. All parties at oral argument stated that they do not oppose dismissal of the motion to dismiss without prejudice.

s/ Tu M. Pham  
TU M. PHAM  
United States Magistrate Judge

June 25, 2013  
Date